

Calendar No. 133

103D CONGRESS
1ST SESSION

S. 521

[Report No. 103-88]

A BILL

To assist the development of tribal judicial systems,
and for other purposes.

JULY 15 (legislative day, JUNE 30), 1993
Reported with an amendment

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To assist the development of tribal judicial systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5 (legislative day, MARCH 3), 1993

Mr. MCCAIN (for himself, Mr. INOUE, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

JULY 15 (legislative day, JUNE 30), 1993

Reported by Mr. INOUE, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To assist the development of tribal judicial systems, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—GENERAL PROVISIONS**

4 ~~SEC. 101. SHORT TITLE.~~

5 This Act may be cited as the “Indian Tribal Justice
6 Act”.

1 **SEC. 102. FINDINGS.**

2 The Congress finds and declares that—

3 (1) there is a government-to-government rela-
4 tionship between the United States and each Indian
5 tribe;

6 (2) Congress, through statutes, treaties, and
7 the exercise of administrative authorities, has recog-
8 nized the self-determination, self-reliance, and inher-
9 ent sovereignty of Indian tribes;

10 (3) Indian tribes possess the inherent authority
11 to establish their own form of government, including
12 tribal justice systems;

13 (4) tribal justice systems are essential to self-
14 government and integral to the fulfillment of the
15 Federal Government's policy of self-determination;

16 (5) tribal justice systems are inadequately fund-
17 ed and the lack of adequate funding impairs their
18 ability to administer justice effectively; and

19 (6) tribal government involvement in and com-
20 mitment to improving tribal justice systems is essen-
21 tial to the accomplishment of the goals of this Act.

22 **SEC. 103. DEFINITIONS.**

23 For purposes of this Act:

24 (1) The term "Bureau" means the Bureau of
25 Indian Affairs of the Department of the Interior.

1 (2) The term “Courts of Indian Offenses”
2 means the courts established pursuant to part 11 of
3 title 25, Code of Federal Regulations.

4 (3) The term “Indian tribe” means any Indian
5 tribe, band, nation, pueblo, or other organized group
6 or community, including any Alaska Native entity,
7 which administers justice under the authority of the
8 United States or the inherent authority of the native
9 entity and which is recognized as eligible for the spe-
10 cial programs and services provided by the United
11 States to Indian tribes because of their status as
12 Indians.

13 (4) The term “judicial personnel” means any
14 judge, magistrate, court counselor, court clerk, court
15 administrator, bailiff, probation officer, officer of the
16 court, dispute resolution facilitator, or other official,
17 employee, or volunteer within the tribal justice
18 system.

19 (5) The term “Office” means the Office of
20 Tribal Justice Support within the Bureau of Indian
21 Affairs.

22 (6) The term “Secretary” means the Secretary
23 of the Interior.

1 (7) The term “tribal organization” means any
 2 organization defined in section 4(c) of the Indian
 3 Self-Determination and Education Assistance Act.

4 (8) The term “tribal justice system” means the
 5 entire judicial branch of an Indian tribe, including
 6 but not limited to traditional methods and forums
 7 for dispute resolution, lower courts, appellate courts,
 8 alternative dispute resolution systems, and circuit
 9 rider systems, established by inherent tribal author-
 10 ity whether or not they constitute a court of record,
 11 and the employees thereof.

12 **TITLE II—TRIBAL JUSTICE** 13 **SYSTEMS**

14 **SEC. 201. OFFICE OF TRIBAL JUSTICE SUPPORT.**

15 (a) **ESTABLISHMENT.**—There is hereby established
 16 within the Bureau the Office of Tribal Justice Support.
 17 The purpose of the Office shall be to further the devel-
 18 opment, operation, and enhancement of tribal justice
 19 systems.

20 (b) **TRANSFER OF EXISTING FUNCTIONS AND PER-**
 21 **SONNEL.**—All functions performed before the date of the
 22 enactment of this Act by the Branch of Judicial Services
 23 of the Bureau and all personnel assigned to such Branch
 24 as of the date of the enactment of this Act are hereby
 25 transferred to the Office of Tribal Justice Support. Any

1 reference in any law, regulation, executive order, reorga-
2 nization plan, or delegation of authority to the Branch of
3 Judicial Services is deemed to be a reference to the Office
4 of Tribal Justice Support.

5 (c) FUNCTIONS.—Except as otherwise provided in
6 title III, in addition to the functions transferred to the
7 Office pursuant to subsection (b), the Office shall perform
8 the following functions:

9 (1) Provide funds to Indian tribes and tribal or-
10 ganizations for the development, enhancement, and
11 continuing operation of tribal justice systems.

12 (2) Provide technical assistance and training to
13 Indian tribes and tribal organizations upon request.

14 (3) Study and conduct research concerning the
15 operation of tribal justice systems.

16 (4) Promote cooperation and coordination be-
17 tween tribal justice systems, the Federal judiciary,
18 and State judiciary systems.

19 (5) Oversee the continuing operations of the
20 Courts of Indian Offenses.

21 (d) ASSISTANCE TO TRIBES.—(1) The Office shall
22 provide training and technical assistance to any Indian
23 tribe or tribal organization upon request. Technical assist-
24 ance and training which may be provided by the Office

1 shall include, but is not limited to, assistance for the devel-
 2 opment of—

3 (A) tribal codes and rules of procedure;

4 (B) tribal court administrative procedures and
 5 court records management systems;

6 (C) methods of reducing case delays;

7 (D) methods of alternative dispute resolution;

8 (E) tribal standards for judicial administration
 9 and conduct; and

10 (F) long-range plans for the enhancement of
 11 tribal justice systems.

12 (2) Technical assistance and training provided pursu-
 13 ant to paragraph (1) may be provided through direct serv-
 14 ices, by contract with independent entities, or through
 15 grants to Indian tribes and tribal organizations.

16 (c) INFORMATION CLEARINGHOUSE ON TRIBAL JUS-
 17 TICE SYSTEMS.—The Office shall establish an information
 18 clearinghouse (which shall include an electronic data base)
 19 on tribal justice systems, including, but not limited to, in-
 20 formation on tribal judicial personnel, funding, model trib-
 21 al codes, tribal justice activities, and tribal judicial deci-
 22 sions. The Office shall take such action as may be nec-
 23 essary to ensure the confidentiality of personnel records,
 24 case records, and other matters involving the privacy of
 25 individuals.

1 **SEC. 202. SURVEY OF TRIBAL JUDICIAL SYSTEMS.**

2 ~~(a) IN GENERAL.~~—Not later than one year after the
3 date of the enactment of this Act, the Secretary, in con-
4 sultation with affected Indian tribes, shall enter into a
5 contract with a non-Federal entity to conduct a survey of
6 conditions of tribal justice systems and Courts of Indian
7 Offenses to determine the resources and funding needed
8 to provide for expeditious and effective administration of
9 justice. The Secretary, in like manner, shall annually up-
10 date the information and findings contained in the survey
11 required under this section.

12 ~~(b) LOCAL CONDITIONS.~~—In the course of any an-
13 nual survey, the non-Federal entity shall document local
14 conditions on each reservation, including, but not limited
15 to—

16 ~~(1) the reservation size and population to be~~
17 ~~served;~~

18 ~~(2) the levels of functioning and capacity of the~~
19 ~~tribal justice system;~~

20 ~~(3) the volume and complexity of the case loads;~~

21 ~~(4) the facilities, including detention facilities,~~
22 ~~and program resources available;~~

23 ~~(5) funding levels and personnel staffing re-~~
24 ~~quirements for the tribal justice system; and~~

25 ~~(6) the training and technical assistance needs~~
26 ~~of the tribal justice system.~~

1 (c) CONSULTATION WITH INDIAN TRIBES.—The
2 non-Federal entity shall actively consult with Indian tribes
3 and tribal organizations in the development of the survey,
4 including updates thereof, of conditions of tribal justice
5 systems. Indian tribes and tribal organizations shall have
6 the opportunity to review and make recommendations re-
7 garding the findings of the survey, including updates
8 thereof, prior to final publication of the survey, or any up-
9 date thereof. After Indian tribes and tribal organizations
10 have reviewed and commented on the results of the survey,
11 or any update thereof, the non-Federal entity shall report
12 its findings, together with the comments and recommenda-
13 tions of the Indian tribes and tribal organizations, to the
14 Secretary, the Committee on Indian Affairs of the Senate,
15 and the Subcommittee on Native American Affairs of the
16 Committee on Natural Resources of the House of Rep-
17 resentatives.

18 **SEC. 203. BASE SUPPORT FUNDING FOR TRIBAL JUSTICE**
19 **SYSTEMS.**

20 (a) IN GENERAL.—Pursuant to the Indian Self-De-
21 termination and Education Assistance Act, the Secretary
22 is authorized to enter into contracts, grants, or agree-
23 ments with Indian tribes and tribal organizations, for the
24 development, enhancement, and continuing operation of
25 tribal justice systems on Indian reservations.

1 (b) PURPOSES FOR WHICH FINANCIAL ASSISTANCE
2 MAY BE USED.—Financial assistance provided through
3 contracts, grants, or agreements entered into pursuant to
4 this section may be used for—

5 (1) planning for the development, enhancement,
6 and operation of tribal justice systems;

7 (2) the employment of judicial personnel;

8 (3) training programs and continuing education
9 for tribal judicial personnel;

10 (4) the acquisition, development, and mainte-
11 nance of a law library or computer assisted legal re-
12 search capacities;

13 (5) the development, revision, and publication
14 of tribal codes, rules of practice, rules of procedure,
15 and standards of judicial performance and conduct;

16 (6) the development and operation of records
17 management systems;

18 (7) the construction or renovation of facilities
19 for tribal justice systems;

20 (8) membership and related expenses for par-
21 ticipation in national and regional organizations of
22 tribal justice systems and other professional organi-
23 zations; and

1 ~~(9)~~ the development and operation of other in-
2 novative and culturally relevant programs and
3 projects, including programs and projects for—

4 ~~(A)~~ alternative dispute resolution;

5 ~~(B)~~ tribal victims assistance or victims
6 services;

7 ~~(C)~~ tribal probation services or diversion
8 programs;

9 ~~(D)~~ multidisciplinary investigations of child
10 abuse; and

11 ~~(E)~~ tribal traditional justice systems or
12 traditional methods of dispute resolution.

13 ~~(c) FORMULA.—(1) Not later than 180 days after the~~
14 date of the enactment of this Act, the Secretary, with the
15 full participation of Indian tribes, shall establish and pro-
16 mulgate by regulation, a formula which establishes base
17 support funding for tribal justice systems in carrying out
18 this section.

19 ~~(2) The Secretary shall develop appropriate caseload~~
20 and staffing criteria for tribal justice systems that take
21 into account unique reservation conditions. In the develop-
22 ment of these criteria, the Secretary shall consult with In-
23 dian tribes and tribal organizations and shall refer to com-
24 parable relevant criteria developed by the Judicial Con-

ference of the United States, the National Center for State Courts, and the American Bar Association.

(3) Factors to be considered in the development of the base support funding formula shall include, but are not limited to—

(A) the caseload and staffing criteria developed under this paragraph;

(B) the reservation size and population to be served;

(C) the volume and complexity of the caseloads;

(D) the projected number of cases per month;

(E) the projected number of persons receiving probation services or participating in diversion programs; and

(F) any special circumstances warranting additional financial assistance.

(4) In developing the formula for base support funding for tribal judicial systems under this section, the Secretary shall ensure equitable distribution of funds.

TITLE III—TRIBAL JUDICIAL CONFERENCES

SEC. 301. ESTABLISHMENT; FUNDING.

(a) ESTABLISHMENT.—In any case in which two or more governing bodies of Indian tribes establish a regional or national judicial conference, such conference shall be

1 considered a tribal organization and eligible to contract
2 for funds under this title; if each member tribe served by
3 the conference has adopted a tribal resolution which au-
4 thorizes the tribal judicial conference to receive and ad-
5 minister funds under this title. At the written request of
6 any tribal judicial conference, a contract entered into pur-
7 suant to this title shall authorize the conference to receive
8 funds and perform any or all of the duties of the Bureau
9 and the Office under sections 201 and 202 of this Act
10 on behalf of the members of such conference.

11 (b) CONTRACT AUTHORITY.—Pursuant to the Indian
12 Self-Determination and Education Assistance Act, the
13 Secretary is authorized to enter into contracts, grants, or
14 agreements with a tribal judicial conference for the devel-
15 opment, enhancement, and continuing operation of tribal
16 justice systems of Indian tribes which are members of
17 such conference.

18 (c) FUNDING.—The Secretary is authorized to pro-
19 vide funding to tribal judicial conferences pursuant to con-
20 tracts entered into under the authority of the Indian Self-
21 Determination and Education Assistance Act for adminis-
22 trative expenses incurred by such conferences.

1 **TITLE IV—AUTHORIZATIONS**

2 **SEC. 401. TRIBAL JUSTICE SYSTEMS.**

3 (a) OFFICE.—There are authorized to be appro-
 4 priated to carry out the provisions of sections 201, 202,
 5 and 301(a) of this Act, \$7,000,000 for each of the fiscal
 6 years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

7 (b) BASE SUPPORT FUNDING FOR TRIBAL JUSTICE
 8 SYSTEMS AND JUDICIAL CONFERENCES.—There are au-
 9 thorized to be appropriated to carry out the provisions of
 10 section 203 of this Act, \$50,000,000 for each of the fiscal
 11 years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

12 (c) ADMINISTRATIVE EXPENSES FOR OFFICE.—
 13 There are authorized to be appropriated, for the adminis-
 14 trative expenses of the Office, \$500,000 for each of the
 15 fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and
 16 2000.

17 (d) ADMINISTRATIVE EXPENSES FOR TRIBAL JUDI-
 18 CIAL CONFERENCES.—There are authorized to be appro-
 19 priated, for the administrative expenses of tribal judicial
 20 conferences, \$500,000 for each of the fiscal years 1994,
 21 1995, 1996, 1997, 1998, 1999, and 2000.

22 (e) SURVEY.—For carrying out the survey under sec-
 23 tion 202, there is authorized to be appropriated, in addi-
 24 tion to the amount authorized under subsection (a) of this
 25 section, \$400,000.

1 ~~(f) NO OFFSET.—No Federal agency shall offset~~
 2 funds made available pursuant to this Act for tribal justice
 3 systems against funds otherwise made available for or in
 4 connection with tribal justice systems.

5 ~~(g) ALLOCATION OF FUNDS.—In allocating funds ap-~~
 6 propriated pursuant to the authorization contained in sub-
 7 section ~~(a)~~ of this section among the Bureau, Office, tribal
 8 governments, and tribal judicial conferences, the Secretary
 9 shall take such action as may be necessary to ensure that
 10 such allocation is carried out in a manner that is fair and
 11 equitable, and is proportionate to base support funding
 12 under section 203 received by the Bureau, Office, tribal
 13 governments, and tribal government members comprising
 14 a judicial conference.

15 **TITLE V—DISCLAIMERS**

16 **SEC. 501. TRIBAL AUTHORITY.**

17 Nothing in this Act shall be construed to—

18 ~~(1)~~ encroach upon or diminish in any way the
 19 inherent sovereign authority of each tribal govern-
 20 ment to determine the role of the tribal court within
 21 the tribal government or to enact and enforce tribal
 22 laws;

23 ~~(2)~~ diminish in any way the authority of tribal
 24 governments to appoint personnel;

1 (3) impair the rights of each tribal government
2 to determine the nature of its own legal system or
3 the apportionment of authority within the tribal gov-
4 ernment;

5 (4) alter in any way traditional dispute resolu-
6 tion forum;

7 (5) imply that any tribal court is an instrumen-
8 tality of the United States; or

9 (6) diminish the trust responsibility of the
10 United States to Indian tribal governments and trib-
11 al court systems of such governments.

12 **SEC. 502. INDIAN PRIORITY SYSTEM.**

13 Nothing in this Act shall affect the eligibility of a
14 tribal government to receive funding through the Indian
15 priority system of the Bureau for support of the tribe's
16 court system.

17 ***TITLE I—GENERAL PROVISIONS***

18 ***SEC. 101. SHORT TITLE.***

19 *This Act may be cited as the “Indian Tribal Justice*
20 *Systems Act”.*

21 ***SEC. 102. FINDINGS.***

22 *Congress finds and declares that—*

23 *(1) there is a government-to-government relation-*
24 *ship between the United States and each Indian tribe;*

1 (2) the United States has a trust responsibility
2 to each tribal government that includes the protection
3 of the sovereignty of each tribal government;

4 (3) Congress, through statutes, treaties, and the
5 exercise of administrative authorities, has recognized
6 the self-determination, self-reliance, and inherent sov-
7 ereignty of Indian tribes;

8 (4) Indian tribes possess the inherent authority
9 to establish their own form of government, including
10 tribal justice systems;

11 (5) tribal justice systems are an essential part of
12 tribal governments and serve as important forums for
13 ensuring public health and safety and the political
14 integrity of tribal governments;

15 (6) Congress and the Federal courts have repeat-
16 edly recognized tribal justice systems as the appro-
17 priate forums for the adjudication of disputes affect-
18 ing personal and property rights;

19 (7) traditional tribal justice practices are essen-
20 tial to the maintenance of the culture and identity of
21 Indian tribes and to the goals of this Act;

22 (8) tribal justice systems are inadequately fund-
23 ed and the lack of adequate funding impairs their op-
24 eration; and

1 (9) *tribal government involvement in and com-*
2 *mitment to improving tribal justice systems is essen-*
3 *tial to the accomplishment of the goals of this Act.*

4 **SEC. 103. DEFINITIONS.**

5 *For purposes of this Act:*

6 (1) *The term “Bureau” means the Bureau of In-*
7 *dian Affairs of the Department of the Interior.*

8 (2) *The term “Courts of Indian Offenses” means*
9 *the courts established pursuant to part 11 of title 25,*
10 *Code of Federal Regulations.*

11 (3) *The term “Indian tribe” means any Indian*
12 *tribe, band, nation, pueblo, or other organized group*
13 *or community, including any Alaska Native entity,*
14 *which administers justice under the authority of the*
15 *United States or the inherent authority of the native*
16 *entity and which is recognized as eligible for the spe-*
17 *cial programs and services provided by the United*
18 *States to Indian tribes because of their status as*
19 *Indians.*

20 (4) *The term “judicial personnel” means any*
21 *judge, magistrate, court counselor, court clerk, court*
22 *administrator, bailiff, probation officer, officer of the*
23 *court, dispute resolution facilitator, or other official,*
24 *employee, or volunteer within the tribal justice*
25 *system.*

1 (5) The term “Office” means the Office of Tribal
2 Justice Support within the Bureau of Indian Affairs.

3 (6) The term “Secretary” means the Secretary of
4 the Interior.

5 (7) The term “tribal organization” means any
6 organization defined in section 4(l) of the Indian
7 Self-Determination and Education Assistance Act.

8 (8) The term “tribal justice system” means the
9 entire justice system of an Indian tribe, including but
10 not limited to traditional methods and forums for dis-
11 pute resolution, lower courts, appellate courts (includ-
12 ing intertribal appellate courts), alternative dispute
13 resolution systems, and circuit rider systems, estab-
14 lished by inherent tribal authority without regard to
15 whether they constitute a court of record.

16 **TITLE II—TRIBAL JUSTICE** 17 **SYSTEMS**

18 **SEC. 201. OFFICE OF TRIBAL JUSTICE SUPPORT.**

19 (a) *ESTABLISHMENT.*—There is hereby established
20 within the Bureau the Office of Tribal Justice Support. The
21 purpose of the Office shall be to further the development,
22 operation, and enhancement of tribal justice systems and
23 Courts of Indian Offenses.

24 (b) *TRANSFER OF EXISTING FUNCTIONS AND PERSON-*
25 *NEL.*—All functions performed before the date of the enact-

1 *ment of this Act by the Branch of Judicial Services of the*
2 *Bureau and all personnel assigned to such Branch as of*
3 *the date of the enactment of this Act are hereby transferred*
4 *to the Office of Tribal Justice Support. Any reference in*
5 *any law, regulation, executive order, reorganization plan,*
6 *or delegation of authority to the Branch of Judicial Services*
7 *is deemed to be a reference to the Office of Tribal Justice*
8 *Support.*

9 (c) *FUNCTIONS.—Except as otherwise provided in title*
10 *III, in addition to the functions transferred to the Office*
11 *pursuant to subsection (b), the Office shall perform the fol-*
12 *lowing functions:*

13 (1) *Provide funds to Indian tribes and tribal or-*
14 *ganizations for the development, enhancement, and*
15 *continuing operation of tribal justice systems.*

16 (2) *Provide technical assistance and training,*
17 *including programs of continuing education and*
18 *training for personnel of Courts of Indian Offenses.*

19 (3) *Study and conduct research concerning the*
20 *operation of tribal justice systems.*

21 (4) *Promote cooperation and coordination be-*
22 *tween tribal justice systems, the Federal judiciary,*
23 *and State judiciary systems.*

24 (5) *Oversee the continuing operations of the*
25 *Courts of Indian Offenses.*

1 (d) *NO IMPOSITION OF STANDARDS.*—*Nothing in this*
 2 *Act shall be deemed or construed to authorize the Office to*
 3 *impose justice standards on Indian tribes.*

4 (e) *ASSISTANCE TO TRIBES.*—(1) *The Office shall pro-*
 5 *vide training and technical assistance to any Indian tribe*
 6 *or tribal organization upon request. Technical assistance*
 7 *and training which may be provided by the Office shall in-*
 8 *clude, but is not limited to, assistance for the development*
 9 *of—*

10 (A) *tribal codes and rules of procedure;*

11 (B) *tribal court administrative procedures and*
 12 *court records management systems;*

13 (C) *methods of reducing case delays;*

14 (D) *methods of alternative dispute resolution;*

15 (E) *tribal standards for judicial administration*
 16 *and conduct; and*

17 (F) *long-range plans for the enhancement of trib-*
 18 *al justice systems.*

19 (2) *Technical assistance and training provided pursu-*
 20 *ant to paragraph (1) may be provided through direct serv-*
 21 *ices, by contract with independent entities, or through*
 22 *grants to Indian tribes and tribal organizations.*

23 (f) *INFORMATION CLEARINGHOUSE ON TRIBAL JUS-*
 24 *TICE SYSTEMS.*—*The Office shall establish and maintain*
 25 *an information clearinghouse (which shall include an elec-*

1 *tronic data base) on tribal justice systems, including, but*
 2 *not limited to, information on staffing, funding, model trib-*
 3 *al codes, tribal justice activities, and tribal judicial deci-*
 4 *sions. The Office shall take such action as may be necessary*
 5 *to ensure the confidentiality records, and other matters in-*
 6 *volving privacy rights.*

7 ***SEC. 202. SURVEY OF TRIBAL JUDICIAL SYSTEMS.***

8 *(a) IN GENERAL.—Not later than 6 months after the*
 9 *date of the enactment of this Act, the Secretary, in consulta-*
 10 *tion with Indian tribes, shall enter into a contract with*
 11 *a non-Federal entity to conduct a survey of conditions of*
 12 *tribal justice systems and Courts of Indian Offenses to de-*
 13 *termine the resources and funding, including base support*
 14 *funding, needed to provide for expeditious and effective ad-*
 15 *ministration of justice. The Secretary, in like manner, shall*
 16 *annually update the information and findings contained*
 17 *in the survey required under this section. Any survey con-*
 18 *ducted pursuant to this section shall be completed and its*
 19 *findings reported by the Secretary and the Congress not*
 20 *later than 12 months after the date on which the contract*
 21 *for the conduct of the survey is executed.*

22 *(b) LOCAL CONDITIONS.—In the course of any annual*
 23 *survey, the non-Federal entity shall document local condi-*
 24 *tions of each Indian tribe, including, but not limited to—*

1 (1) *the geographic area and population to be*
2 *served;*

3 (2) *the levels of functioning and capacity of the*
4 *tribal justice system;*

5 (3) *the volume and complexity of the case loads;*

6 (4) *the facilities, including detention facilities,*
7 *and program resources available;*

8 (5) *funding levels and personnel staffing require-*
9 *ments for the tribal justice system; and*

10 (6) *the training and technical assistance needs of*
11 *the tribal justice system.*

12 (c) *CONSULTATION WITH INDIAN TRIBES.—The non-*
13 *Federal entity shall actively consult with Indian tribes and*
14 *tribal organizations in the development and conduct of the*
15 *survey, including updates thereof, of conditions of tribal*
16 *justice systems. Indian tribes and tribal organizations shall*
17 *have the opportunity to review and make recommendations*
18 *regarding the findings of the survey, including updates*
19 *thereof, prior to final publication of the survey, or any up-*
20 *date thereof. After Indian tribes and tribal organizations*
21 *have reviewed and commented on the results of the survey,*
22 *or any update thereof, the non-Federal entity shall report*
23 *its findings, together with the comments and recommenda-*
24 *tions of the Indian tribes and tribal organizations, to the*
25 *Secretary, the Committee on Indian Affairs of the Senate,*

1 *and the Subcommittee on Native American Affairs of the*
 2 *Committee on Natural Resources of the House of Represent-*
 3 *atives.*

4 ***SEC. 203. BASE SUPPORT FUNDING FOR TRIBAL JUSTICE***
 5 ***SYSTEMS.***

6 *(a) IN GENERAL.—Pursuant to the Indian Self-Deter-*
 7 *mination and Education Assistance Act, the Secretary is*
 8 *authorized to enter into contracts, grants, or agreements*
 9 *with Indian tribes and tribal organizations, for the develop-*
 10 *ment, enhancement, and continuing operation of tribal jus-*
 11 *tice systems and traditional tribal judicial practices by In-*
 12 *dian tribal governments.*

13 *(b) PURPOSES FOR WHICH FINANCIAL ASSISTANCE*
 14 *MAY BE USED.—Financial assistance provided through*
 15 *contracts, grants, or agreements entered into pursuant to*
 16 *this section may be used for—*

- 17 *(1) planning for the development, enhancement,*
 18 *and operation of tribal justice systems;*
- 19 *(2) the employment of judicial personnel;*
- 20 *(3) training programs and continuing education*
 21 *for tribal judicial personnel;*
- 22 *(4) the acquisition, development, and mainte-*
 23 *nance of a law library or computer assisted legal re-*
 24 *search capacities;*

1 (5) the development, revision, and publication of
2 tribal codes, rules of practice, rules of procedure, and
3 standards of judicial performance and conduct;

4 (6) the development and operation of records
5 management systems;

6 (7) the construction or renovation of facilities for
7 tribal justice systems;

8 (8) membership and related expenses for partici-
9 pation in national and regional organizations of trib-
10 al justice systems and other professional organiza-
11 tions; and

12 (9) the development and operation of other inno-
13 vative and culturally relevant programs and projects,
14 including programs and projects for—

15 (A) alternative dispute resolution;

16 (B) tribal victims assistance or victims
17 services;

18 (C) tribal probation services or diversion
19 programs;

20 (D) juvenile justice services and multidisci-
21 plinary investigations of child abuse; and

22 (E) traditional tribal judicial practices,
23 traditional tribal justice systems and traditional
24 methods of dispute resolution.

1 (c) *FORMULA.*—(1) *Not later than 180 days after the*
2 *date of the enactment of this Act, the Secretary, with the*
3 *full participation of Indian tribes, shall establish and pro-*
4 *mulgate by regulation, a formula which establishes base*
5 *support funding for tribal justice systems in carrying out*
6 *this section.*

7 (2) *The Secretary shall assess caseload and staffing*
8 *needs for tribal justice systems and take into account*
9 *unique geographic and demographic conditions. In the as-*
10 *essment of these needs, the Secretary shall work coopera-*
11 *tively with Indian tribes and tribal organizations and shall*
12 *refer to any data developed as a result of the surveys con-*
13 *ducted pursuant to section 202 and to comparable relevant*
14 *assessment standards developed by the Judicial Conference*
15 *of the United States, the National Center for State Courts,*
16 *and the American Bar Association.*

17 (3) *Factors to be considered in the development of the*
18 *base support funding formula shall include, but are not lim-*
19 *ited to—*

20 (A) *the caseload and staffing needs identified*
21 *under paragraph (2) of this section;*

22 (B) *the geographic area and population to be*
23 *served;*

24 (C) *the volume and complexity of the caseloads;*

25 (D) *the projected number of cases per month;*

1 (E) the projected number of persons receiving
 2 probation services or participating in diversion pro-
 3 grams; and

4 (F) any special circumstances warranting addi-
 5 tional financial assistance.

6 (4) In developing the formula for base support funding
 7 for tribal judicial systems under this section, the Secretary
 8 shall ensure equitable distribution of funds.

9 **TITLE III—TRIBAL JUDICIAL** 10 **CONFERENCES**

11 **SEC. 301. ESTABLISHMENT; FUNDING.**

12 (a) *ESTABLISHMENT.*—In any case in which two or
 13 more governing bodies of Indian tribes establish a regional
 14 or national judicial conference, such conference shall be con-
 15 sidered a tribal organization and eligible to contract for
 16 funds under this title, if each member tribe served by the
 17 conference has adopted a tribal resolution which authorizes
 18 the tribal judicial conference to receive and administer
 19 funds under this title. At the written request of any tribal
 20 judicial conference, a contract entered into pursuant to this
 21 title shall authorize the conference to receive funds and per-
 22 form any or all of the duties of the Bureau and the Office
 23 under sections 201 and 202 of this Act on behalf of the mem-
 24 bers of such conference.

1 (b) *CONTRACT AUTHORITY.*—Pursuant to the Indian
 2 *Self-Determination and Education Assistance Act, the Sec-*
 3 *retary is authorized, subject to appropriations, to enter into*
 4 *contracts, grants, or agreements with a tribal judicial con-*
 5 *ference for the development, enhancement, and continuing*
 6 *operation of tribal justice systems of Indian tribes which*
 7 *are members of such conference.*

8 (c) *FUNDING.*—The Secretary is authorized to provide
 9 *funding to tribal judicial conferences pursuant to contracts*
 10 *entered into under the authority of the Indian Self-Deter-*
 11 *mination and Education Assistance Act for administrative*
 12 *expenses incurred by such conferences.*

13 ***TITLE IV—STUDY OF TRIBAL/***
 14 ***FEDERAL COURT REVIEW***

15 ***SEC. 401. STUDY.***

16 (a) *TRIBAL/FEDERAL COURT REVIEW.*—A comprehen-
 17 *sive study shall be conducted in accordance with subsection*
 18 *(b), of the treatment by tribal justice systems of matters*
 19 *arising under the Indian Civil Rights Act (25 U.S.C. 1301*
 20 *et seq.) and of other Federal laws for which tribal justice*
 21 *systems have jurisdictional authority and regulations pro-*
 22 *mulgated by Federal agencies pursuant to the Indian Civil*
 23 *Rights Act and other Acts of Congress. The study shall in-*
 24 *clude an analysis of those Indian Civil Rights Act cases*
 25 *that were the subject of Federal court review from 1968 to*

1 1978 and the burden, if any, on tribal governments, tribal
 2 justice systems, and Federal courts of such review. The
 3 study shall address the circumstances under which Federal
 4 court review of actions arising under the Indian Civil
 5 Rights Act may be appropriate or warranted.

6 (b) TRIBAL/FEDERAL COURT REVIEW STUDY
 7 PANEL.—The study required in subsection (a) shall be con-
 8 ducted by the Tribal/Federal Court Review Study Panel in
 9 consultation with tribal governments.

10 **SEC. 402. TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.**

11 (a) COMPOSITION.—The Tribal/Federal Court Review
 12 Study Panel shall consist of—

13 (1) four representatives of tribal governments,
 14 including tribal court judges, two of whom shall be
 15 appointed by the Speaker of the House of Representa-
 16 tives and two of whom shall be appointed by the
 17 President pro tempore of the Senate; and

18 (2) four members of the United States Courts of
 19 Appeal, of whom one shall be appointed by the chief
 20 judge of the eighth circuit, one by the chief judge of
 21 the ninth circuit, one by the chief judge of the tenth
 22 circuit, and one by the chief judge of the Federal cir-
 23 cuit.

24 (b) PERSONNEL.—The Tribal/Federal Court Review
 25 Study Panel may employ, on a temporary basis, such per-

1 *sonnel as are required to carry out the provisions of this*
 2 *title.*

3 *(c) FINDINGS.—The Tribal/Federal Court Review*
 4 *Study Panel, not later than the expiration of the 12-month*
 5 *period following the date on which moneys are first made*
 6 *available to carry out this title, shall submit its findings*
 7 *and recommendations to—*

8 *(1) Congress;*

9 *(2) the Secretary;*

10 *(3) the Director of the Administrative Office of*
 11 *the United States Courts; and*

12 *(4) each Indian tribe.*

13 *(d) TERMINATION.—Thirty days after the Panel has*
 14 *submitted its findings and recommendations under sub-*
 15 *section (c), the Panel shall cease to exist.*

16 ***TITLE V—AUTHORIZATIONS***

17 ***SEC. 501. TRIBAL JUSTICE SYSTEMS.***

18 *(a) OFFICE.—There are authorized to be appropriated*
 19 *to carry out the provisions of sections 201, 202, and 301(a)*
 20 *of this Act, \$7,000,000 for each of the fiscal years 1994,*
 21 *1995, 1996, 1997, 1998, 1999, and 2000. None of the funds*
 22 *provided pursuant to the authorizations under this sub-*
 23 *section may be used for the administrative expenses of the*
 24 *Office.*

1 (b) *BASE SUPPORT FUNDING FOR TRIBAL JUSTICE*
2 *SYSTEMS AND JUDICIAL CONFERENCES.*—There are author-
3 ized to be appropriated to carry out the provisions of section
4 203 of this Act, \$50,000,000 for each of the fiscal years
5 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

6 (c) *ADMINISTRATIVE EXPENSES FOR OFFICE.*—There
7 are authorized to be appropriated, for the administrative
8 expenses of the Office, \$500,000 for each of the fiscal years
9 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

10 (d) *ADMINISTRATIVE EXPENSES FOR TRIBAL JUDI-*
11 *CIAL CONFERENCES.*—There are authorized to be appro-
12 priated, for the administrative expenses of tribal judicial
13 conferences, \$500,000 for each of the fiscal years 1994, 1995,
14 1996, 1997, 1998, 1999, and 2000.

15 (e) *SURVEY.*—For carrying out the survey under sec-
16 tion 202, there is authorized to be appropriated, in addition
17 to the amount authorized under subsection (a) of this sec-
18 tion, \$400,000 for each of the fiscal years 1994, 1995, 1996,
19 1997, 1998, 1999, and 2000.

20 (f) *AUTHORIZATION.*—For carrying out the study
21 under section 401, there is authorized to be appropriated
22 such sums as may be necessary.

23 (g) *NO OFFSET.*—No Federal agency shall offset funds
24 made available pursuant to this Act for tribal justice sys-

1 *tems against funds otherwise available for use in connection*
 2 *with tribal justice systems.*

3 *(h) ALLOCATION OF FUNDS.—In allocating funds ap-*
 4 *propriated pursuant to the authorization contained in sub-*
 5 *section (a) of this section among the Bureau, Office, tribal*
 6 *governments, and tribal judicial conferences, the Secretary*
 7 *shall take such action as may be necessary to ensure that*
 8 *such allocation is carried out in a manner that is fair and*
 9 *equitable, and is proportionate to base support funding*
 10 *under section 203 received by the Bureau, Office, tribal gov-*
 11 *ernments, and tribal government members comprising a ju-*
 12 *dicial conference.*

13 *(i) INDIAN PRIORITY SYSTEM.—Funds appropriated*
 14 *pursuant to the authorizations provided by this section and*
 15 *available for a tribal justice system shall not be subject to*
 16 *the Indian priority system. Nothing in this Act shall pre-*
 17 *clude a tribal government from supplementing any funds*
 18 *received under this Act with funds received from any other*
 19 *source including the Bureau or any other Federal agency.*

20 ***TITLE VI—DISCLAIMERS***

21 ***SEC. 601. TRIBAL AUTHORITY.***

22 *Nothing in this Act shall be construed to—*

23 *(1) encroach upon or diminish in any way the*
 24 *inherent sovereign authority of each tribal govern-*
 25 *ment to determine the role of the tribal court within*

1 *the tribal government or to enact and enforce tribal*
2 *laws;*

3 *(2) diminish in any way the authority of tribal*
4 *governments to appoint personnel;*

5 *(3) impair the rights of each tribal government*
6 *to determine the nature of its own legal system or the*
7 *apportionment of authority within the tribal govern-*
8 *ment;*

9 *(4) alter in any way traditional dispute resolu-*
10 *tion forums;*

11 *(5) imply that any tribal court is an instrumen-*
12 *tal of the United States; or*

13 *(6) diminish the trust responsibility of the*
14 *United States to Indian tribal governments and*
15 *tribal justice systems of such governments.*

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